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NO. 948

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

EDMUND WINKLER, Petitioner

v.

SAMUEL W. PRINGLE AND THE PENNSYLVANIA RAILROAD COMPANY, a Corporation, Respondents

PETITION FOR WRIT OF CERTIORARI OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

EDMUND WINKLER
2321 Sherbrook Street
Pittsburgh 17, Pa.
In His Own Behalf

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IN THE

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NO. .... OCTOBER TERM, 1963

EDMUND WINKLER, Petitioner

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SAMUEL W. PRINGLE AND THE PENNSYLVANIA RAILROAD COMPANY, a Corporation, Respondents

PETITION FOR WRIT OF CERTIORARI OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, Edmund Winkler respectfully prays that a Writ of Certiorari issue out of this Court to review the judgment of the United States Court of Appeals for the Third Circuit in favor of the Petitioner.

OPINIONS OF THE COURTS BELOW

The Opinion of the United States Court of Appeals for the Third Circuit is set forth as Appendix III beginning on page 44. The same Opinion is reported at 324 F.2d 613.

The Opinion of the United States District Court for Western Pennsylvania is set forth as Appendix I, beginning with page 36 and is reported at 214 F.Supp. 125.

JURISDICTION

The date of the Judgment of the United States Court of Appeals for the Third Circuit to be reviewed and the time of its entry was November 5, 1963.

An Order Extending Time to File Petition for Writ of Certiorari was issued by the Supreme Court of The United States dated January 22nd. 1964, with the extension to and including April 4, 1964. (Appendix IV.) page 50.

Jurisdiction to review this case upon Writ of Certiorari is conferred upon this Court in 28 U.S.C. Section 1254 (1).

QUESTIONS PRESENTED FOR REVIEW

1. The Circuit Court of Appeals erred in denying the jurisdiction of the Federal Court in this case by affirming such ruling of the U.S. District Court being in a way in conflict with applicable decisions of the Supreme Court of the United States.

Questions Arising Out of This Case.

2. The Circuit Court of Appeals erred in failing to state the violation by the defendant of the petitioner's civil rights in a court proceeding (28 U.S.C. Par. 1343, 42 U.S.C. Par. 1981 et seq. 109 U.S. 3, 3 S.Ct. 18) admitted by the defense above and beyond the meaning of a demurrer.

3. The Circuit Court of Appeals erred in citing in the opinion parts of the state court (accident) proceeding, not argued before the Circuit Court, which in some parts as cited in the opinion, do not agree with the courts' records, in other parts have not been legally proven in neither court proceeding.

4. The Circuit Court of Appeals erred in failing to issue a ruling on a charge of defamation against the defense brought forth in the proceeding before the Court October 17th, 1963 and being under the jurisdiction of the Federal Court Authorities.

QUESTIONS ARISING OUT OF THIS CASE

1. Are Provisions of the United States Constitution as Due Process and Equal Protection of the Laws observed and protected in the execution of state court proceedings.

2. Are Lower or State Courts entitled in their rulings to prefer customary or state decisions against or despite applicable federal legislation and the Constitution of the United States.

CASE HISTORY

Petitioner is not represented by counsel. No-one of the contacted lawyers or law-offices accepted the plea to represent the petitioner in court. In this case v. another lawyer, charging him with improper behavior in a court-proceeding.

Surprisingly?—Perhaps only to the unexperienced non-lawyer, because the following events in the courts indicated what the news-media and occasionally an assistant district attorney agreed upon: "that top judges and lawyers and prosecutors are an in-group just like doctors or reporters or stockbrokers."

Only one of the lawyers (it was understood: for the agreed upon fee and under the condition not to be named or represent in court) consented to write the first suit to the court and used the word SCANDALOUS, so impressively noted as "violent language" in the opinion of the U.S. Court of Appeals, that petitioner "very largely brought it on himself". (Page 47)

THE CHARGE: insults, unjustified and unsupported, followed by the violation of constitutional law in court.

In the negligence (auto-accident) action No. 1227 Jan. Term 1958 before the Common Pleas Court in Pittsburgh, Pa. at the time of the proceeding March 7th. 1961: The train-crew as witnesses for the defendant, the Pennsylvania Railroad Co. testified differently, and were contradicted and proven wrong by the defense's own NEUTRAL witness-bystander from the street. In view of these circumstances and in the application of the defense counsel's own specific court trial tactics, the counsel called

the petitioner LIAR, charged the petitioner with faking injuries and persuading the physicians and hospital staff to support him in this "SCHEME of fakery what they did. And in the intention to exploit all available arguments the counsel described the petitioner as the FOREIGNER who came here, does himself very well and now wants to piek up more money, something for nothing, from the big corporation, the Pennsylvania Railroad Company.

These expressions uttered not in line of a heated debate, but in the presentation to the jury, brought forth calmly in the routine of the long experienced lawyer, well prepared with the full knowledge of his profession, to evaluate, what he was doing.

The defense never openly admitted the violation of the law, the "Demurrer" as presumed, to be judged in the following court proceeding. But this is what the defense stated on different occasions:

a From the defense's brief to the Common Pleas Court in action for defamation No. 2180 April Term 1962:

"Plaintiff seems to feel agrieved because some reference was made by counsel for the defense to his foreign birth." Unquote.

WHAT CERTAINLY CONSTITUTES AN ADMISSION OF THE ACTION AS CHARGED. (The petitioner).

b In the hearing before the U.S. District Court in action No. 62-808-CA. counsel Mr. Martin for the defense:

"What he complains of, he says that Mr. Pringle referred to him as a foreigner, in his closing speech

to the jury. Now, of course, Mr. Pringle doesn't agree (SIC) with anything that he said, *I mean with Mr. Winkler's interpretation of what he said. Mr. Pringle certainly has known that Mr. Winkler is a naturalized citizen.*" Unquote. (Page 3 of the court's record.)

c/ From the defense's brief to the U.S. Court of Appeals page 3:

"Judge Aldisert's opinion reported in 110 Pgh. L.J. 323 (1962) states the law applicable to plaintiff's claim.

Plaintiff contends, however, that that opinion contains factual errors. The claimed errors include the court's remarks as to how plaintiff's foreign birth and prison camp experience came into the case. Actually, it would be to ignore reality to assume that any juror who heard plaintiff testify, would not be aware that he had spent his youth outside the United States." Unquote.

(See Annex A.B.C. pages 28 to 31).

Petitioner's comment: The expectation of the defense, that the jury could be guided in its deliberation by this type of consideration, *couldn't be expressed more cynically*. The counsel's remarks to the jury evidently should have fortified, that his expectations become true.

And after the preceding expressions of admission and excuses, the latest statement of denial:

d page 5 of the defense's brief to the U.S. Court of Appeals:

"It is obvious, to anyone BUT A LAYMAN, that the admission that the alleged remark was made is only

for the purpose of arguing the legal points raised by our motion to dismiss." Unquote.

The petitioner as LAYMAN may as well accept this statement as some other trial tactics, certainly not as a declaration of true circumstances. Trial tactics as employed in another defense's statement to the Supreme Court of Pennsylvania, where the allegation noted under point 1, whereas Judge Aldisert's opinion for the Common Pleas Court not to have included wrong citation of facts, was brought forth with affidavit, approved by the notary public, and may be considered perjury because of inconformity with the record.

> THE LAWYER, CALLED THE OFFICER OF THE COURT, DELIBERATELY VIOLATES THE LAW OF THE LAND, THE CONSTITUTION, EXERCISES WILLINGLY AND WITH THE INTENT OF GAIN AN IMPROPER INFLUENCE UPON THE JURY, TWELVE MEN AND WOMEN, THE FIRST TIME ON JURY DUTY, * * * AN ACTION VIOLENTLY IN DEFIANCE OF THE PRINCIPLES OF DEMOCRACY WHAT THIS NATION STANDS FOR, AND WHICH ANY COURT IN THE NATION, ENTRUSTED WITH THE EXECUTION OF JUSTICE IN ACCORDANCE WITH THE LAW OF THE LAND IS SUPPOSED TO REJECT, IN SUPPORT OF: *"DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS."*

So far as technical possible any LAYMAN in reading the Constitution of the United States, will agree and support the preceding statement. To this moment the COURTS did not.

Case History.

The record of the events, which followed the formal charge against the defense counsel was so manifold, unbelievable but for the LAYMAN, that it had to be discarded as too voluminous to be presented in this brief, although already prepared.

The initial steps in the form of a complaint to the Bar Association in the intent to find the exoneration and apology by the counsel for the unjustified insults were only answered: ". . . as that the attorney will step out of line and intentionally or *unintentionally* make statements or inserts *remarks that should not be allowed*. . . . should be attended to at the time since the whole proceeding is under the control of the court. . . ." Unquote.

In view of this reply without remedy or sufficient justification it was to expect that the Court in the application of law and proper justice will make the only one possible and unshakable decision as final, in judging the counsel's action as unpermissible as charged. Surprisingly, what was left, after the Common Pleas Court's Court en Banc issued the majority opinion, was only the naked fact, that the *"State Court discarded constitutional rights"* in favor of theatrical uncertainty and lack of legal finding, setting the stamp PRIVILEGED for the hypocrisy of the counsel's—the BARRISTERIAL GLADIATOR's—failing responsibility. (See Annex B, page 30) One of the judges, highly recognized, stated to have dissented for moral reasons.

From Annex B, page 29: Judge Aldisert as writer of the court's opinion inserted the statement, that "foreign birth was first injected into the trial by petitioner's own counsel". Petitioner objected in brief and hearing against this statement, suggested by the defense, as

incorrect and contrary with the record Annex A, page 23), the objection sustained by counsel Berger and Berger (Annex C, page 31).

For the completion of the record: the application for continuance of the appeal in the Supreme Court of Pennsylvania, motivated with financial reasons and to avoid duplicity with reference to the action already taken in the U. S. District Court, was denied without motivation. Not quite so. Because already the presentation of the application for continuance to the office of the Supreme Court was immediately met with the Prothonotary's prediction of the denial and the statement: ". . . what do you think, you are attacking a lawyer, a member of the Bar Association".

The following hearing before the Court, the petitioner by the prothonotary "with the order of the Court" told to appear despite his objections, was the forum for further short discussion of the continuance only, succeeded by the Court's decision: "March 27, 1963 Appeal quashed. Per curiam."

The legality of the single decisions as shown and the legality of all of them in their consecutive order is in their logic of sequence hard to understand for the LAYMAN. Maybe an answer shall be found in the future.

In reference to the Court en Banc's decision in action No. 2180 April Term 1962 for defamation:

From part-time work for lawyers in the years of education petitioner is aware of the old established principle, that once a court's opinion is based and referring to facts but cited incorrect and contrary to the

court's record, the judgment is bound to be declared VOID because:-

The court certainly is independent in his judgment but *in the framework and application of the law,* as well as *based on facts* recorded as presented.

Where facts appear to be changed as referred to in the judgment, then

a/ if this happens to be unintentionally, it shall be considered that the Court neglected to give the court's record and facts of the case the proper attention,

b/ if this happens to be intentionally (as in this case where petitioner repeatedly and prior to the decision objected to the alterations of the facts) it shall be considered that the court willfully and with prejudice, contrary to the facts, issued an erroneous and wrong judgment.

Petitioner feels sorry to state that the same principle applies as well to the U. S. Court of Appeals (page 44) judgment, which in two points (leg injury dating from the prison camp and the two judges named as co-defendants) is citing facts contrary to the record and briefs.

THE ACTION IN THE U.S. DISTRICT COURT

In view of the events and the decision before the Common Pleas Court's Court en Banc, and in the assumption, that similar prejudice and support for the lower Court's ruling may prevail in the judgment of the Supreme Court of Pennsylvania (what turned out to be true) petitioner filed with the U. S. District Court the complaint against the Pennsylvania Railroad Company and its counsel Mr. Pringle for violation of the 14th. Amendment to the U. S. Constitution and others named, the incriminated action having taken place in a proceeding before the Common Pleas Court. The complaint filed with the U. S. District Court in application of rule Par. 70 of the REMOVAL of state cases to the Federal Courts, in the expectations that the Common Pleas Court's—as state court—ruling PRIVILEGED, at the same time overruling federal legislation, may be upheld by the Court, to be appealed to and before this Court issued a decision.

The jurisdiction of the U. S. District Court was further alleged in naming the Judges C. B. Nixon and R. Aldisert as by decisions DE FACTO CO-OPERATING with the defense, whose rulings, if proper applied in the terms of prevailing law and regulations, could have limited the case to the state court action. Judge C. B. Nixon not only did not stop, prevent or ordered to be stricken from the record the defense counsel's utterances as charged, but prevented petitioner's counsel to take appropriate stand and give corrective answer (see page 28), thus leaving the jury under a factual false impression of circumstances (see the opinion of the Bar Association page 8). The action of Judge R. Aldisert, objected to by the petitioner, is described in the preceding case his-

tory. Reference was made to the decision of the U. S. Court of Appeals in *Picking v. P. R. R.* 3rd Circ. 1945, 151 F.2d. 240, upheld by the same Court in *Ginsburg v. Supreme Court of Pennsylvania* 251 F.2d. 49, where the Court enunciated state police officers in execution of their state governor's orders as persons CONSPIRING with the defendant, the Pennsylvania Railroad Company.

Highlights of the hearing and decision:

> Annex "D" page 33. Twice the Court stated that: "HERE CAN BE SUFFICIENT BASIS FOR A COMPLAINT . . . AS STATING A CAUSE OF ACTION . . . ."
>
> Defense counsel Mr. Martin answers: "It may be."
>
> In the decision the Court reversed itself:
>
> "Defendant's motion for dismissal is based upon the reason that plaintiff's complaint DOES NOT SET OUT A CAUSE OF ACTION. THE COURT AGREES with the defendant.

Annex "E" page 34. The Court agrees to review the record of the Common Pleas Court for proof of the judges co-operation with the defense "with this particular matter". Later in the court's decision (Annex G, pages 36 and 37):

> "Since the plaintiff has incorporated in his complaint the proceedings had in the Common Pleas Court, THEY ARE HERE CONSIDERED FACTUALLY."

But in the reversal of these statements the court stipulated further in the ruling, that:

> "While making these assertions, he (the petitioner) does not aver a single fact upon which he can achieve his aim. His averments are based upon his

> own conclusion and to bolster these, he ask this Court to REVIEW the ENTIRE RECORD,"—what the court refused.

Once the court accepted the record as FACTUALLY, —as is shown above—it is hardly to justify, that with the next statement the court refuses the same record. And once the record is CONSIDERED FACTUALLY, the record reveals the facts in accordance with the petitioner's allegations. Thus the court's stipulation not to have learned of any facts because the petitioner DOES NOT AVER A SINGLE FACT is insufficient proved and does not deny, that the petitioner actually presented many facts in support of the requested jurisdiction of the court and proof of complaint, but that they were not taken in consideration because of the REFUSAL TO REVIEW. Judge Rosenberg always was considered as very conscious in his work and certainly favors to be regarded as such. It leaves the question: Actually Judge Rosenberg did not read the record as asserted—or—did Judge Rosenberg refuse the review, BECAUSE HE READ the RECORD.

> The Court has certainly the right to stipulate, that: "a United States District Court will not act as a court of review" . . . of a state court decision.

But with the same breath, with the immediately following statement, the court does just that and REVIEWS what Judge Aldisert in the ruling of the Common Pleas Court EXPLAINS AND SUMMARIZES TO THE LAW AND RATIONALE AS TO THE RIGHTS. Thus not only the reversal of the court's own opinion is hardly proven justified but as well in view of the specific circumstances, that the favorable appraisal of the Common Pleas Court's ruling is issued in the court's opinion despite petitioner's claim

with proof, this ruling to be improper, which the U. S. District Court REFUSED TO REVIEW:

The U. S. District Court MISSED AND DID NOT ISSUE ITS RULING in response to the defense's motion to strike Par. 17 of petitioner's brief, which reads (in short):

> "Schlesinger Appeal, 404 Pa. Supreme Court of Pennsylvania: An individual, who is given the priceless privilege of practing law, is duty bound to uphold and defend the Constitution of the United States. . . . If established facts tend to indicate that he has forsaken that oath, . . . is sufficient to warrant the conclusion that he is the type of person unworthy of being a member of the legal profession. . . .

The Common Pleas Court's ruling reads: (Annex "B" pages 29 and 30)

> ". . . defamatory references concerning foreign birth which conceivable may have been *actionable if uttered outside this circumscribed jurisprudential arena. . . .*" which they were not, because uttered *inside* the so specific described forum.

The U. S. District Court just does that, considers the defamatory *references as uttered outside the arena* what permits him to dismiss the complaint with the citation of *Williams v. Yellow Cab Co.* 200 F.2d. (3rd. Circ.) 307. Theretofore, both court's ruling, although changing inside to outside or vice versa, are identical in the achievement of the same goal, the complaint's dismissal not with terms or reasons substantiated, but with the NEGATIVE ARGUMENTATION: the lack of jurisdiction.

The Action in the U. S. District Court.

Petitioner repeatedly objected to the defense's motion to dismiss with reference to *Williams v. Yellow Cab Co.* as unsubstancial and erroneous, because in this case two parties of the same state citizenship approached the court to settle their differences of opinion in reference to civil rights, what the federal courts are inclined to refuse.

Certainly in the present complaint the defendant is charged with the violation of the petitioner's civil rights, but this action happened to be executed in Court, in a legal state proceeding,—it is not only the violation of civil rights, which has to be taken under judgment,—it is the defendant's violation, deliberately executed, against the basic rule of any court of DUE PROCESS and EQUAL PROTECTION OF THE LAW, without which no court can operate in the democracy of a free society, and without which any execution of justice actually stops to exist.

Both courts actually did disregard the defendant's action as to the intention to bring about the judgment not on the merits of the case but on the bearing who are the parties.

And if this principle is accepted—both court's ruling do not condemn it—the legal process of execution of justice steps backward to the point where it started from hundreds of years ago, or, as we saw it in this close past in the excessive case, the judge is getting to be the conspirator if, per example by reason of patriotism, he sees only the merits of the parties and the one party happens to be the absolute ruled government, whose servant he is.

REASONS FOR GRANTING THE WRIT
THE ACTION IN THE U.S. COURT OF APPEALS

I. The Circuit Court of appeals erred in denying the jurisdiction of the Federal Court in this case by affirming such ruling of the U.S. District Court, being in a way in conflict with applicable decisions of the Supreme Court of the United States.

The U.S. Court of Appeals with opinion November 6th. 1963 affirmed the ruling of the District Court, citing the same principle of invasion of the civil rights of one individual by another, which the U.S. District Court did set forth as basis for dismissal in naming the *Williams v. Yellow Cab Co.* ruling.

Petitioner in Appellant's brief and Appellant's Reply brief to the District Court and U.S. Court of Appeals outlines in broad language the allegation, arguments and objections to the above named ruling as erroneous, which are as well substantiated on the two preceding pages of this brief as objections as well against this point of the U.S. Court of Appeals opinion.

Petitioner presented to the Court the ruling in CIVIL RIGHTS CASES 109 U.S. 3, 3 S.Ct. 18, reprinted in the Congressional Record of the U.S. Senate as recent as 1963 pages 8829 through 8832.

This ruling states, that ". . . civil rights cannot be impaired, UNSUPPORTED BY STATE AUTHORITY IN THE SHAPE OF JUDICIAL PROCEEDINGS, — or — As the decision intends to say, civil rights are violated, if impaired in a state court, i.e., judicial proceeding.

The ruling's intention of this decision is repeatedly stated as violation of civil rights if PROTECTED IN THESE

WRONGFUL ACTS BY SOME SHIELD OF STATE LAW OR STATE AUTHORITY, what in this present case is shown as the basis of the petitioner's complaint.

But the same ruling makes further the statement, that: "THIS LAW IS CLEARLY CORRECTIVE . . . AND FURNISHES REDRESS AGAINST STATE LAWS AND PROCEEDINGS AND CUSTOMS HAVING THE FORCE OF LAW — (like PRIVILEGED) — WHICH SANCTION THE WRONGFUL ACTS SPECIFIED.

The Court was quite aware of the far reaching importance of this ruling, evidenced in the following partially record of the hearing: (page 26 of the record)

> *Mr. Martin* (counsel for the defense): Skolnik v. Martin, and the same plaintiff against Spolar, 317 F.2d. 855 and 317 F 2d. 857.
>
> *Judge McLaughlin*: What about those cases, Mr. Martin?
>
> *Mr. Martin*: Those cases were suits similar to Mr. Winkler's action in which . . .
>
> *Judge McLaughlin*: *Arising out of a court case?*
>
> *Mr. Martin*: A state court proceeding, and the language of that court I think disposes of the thing. Unquote.

Mr. Martin was incorrect in his assertions of a similarity of the named cases with the petitioners complaint, because the basis of the charge in these both cases is merely a deposition meeting between one party and the lawyer of the other party in the completely absence of any state authority or person of state color, necessarily present in the execution of jurisdiction or state action.

The Action in the U. S. Court of Appeals.

In the customary practice of the courts the discussed U.S. Supreme Court ruling should have been full advisory for the judgment of the U.S. Court of Appeals, because neither the defense nor the Court itself did show any other contradictory law or conflicting U.S. Court ruling.

The U.S. Court of Appeals in his opinion indicated that petitioner invoked the 14th. Amendment and the Civil Rights Act, but without interpretation. Thus the Court did not offer any enunciation of objections or substantiations of merits of pro or contra in regard with the presented U.S. Supreme Court ruling. Simple, the Court favored the support of the decision *Williams v. Yellow Cab Co. and did in effect disregard the U.S. Supreme Court's ruling, which in the general understanding is guiding in the judgment and substituting any appropriate law.*

The repetition of the U.S. District Court's statement by the U.S. Court of Appeals: * * * (appellant) does not aver a single fact upon which he can achieve his aim * * * is erroneous, because the U.S. Distrcit Court refused to review the facts presented by petitioner as shown in the preceding pages 12 to 14.

In the sincere appeal to the U.S. Court of Appeals petitioner made in his brief the following general statement, which at the present, after the Court's decision, as well seems appropriate:

ANY OFFENSE, COMMITTED, CHARGED AND PROVEN, HAS TO BE FOLLOWED BY A JUDGMENT, THE LACK OF IT DENIES THE VERY EXISTENCE OF THE LAW, AGAINST WHICH

THE OFFENSE IS DIRECTED * * * ESCAPES FROM THE JUDGMENT IN WHAT WAY EVER PROVE ONLY THE LACK OF JUSTICE AND THE EXECUTION THEREOF.

II. The Circuit Court of Appeals erred in failing to state the violation by the defendant of the petitioner's civil rights in a court proceeding (28 U.S.C.Par.1343, 42 U.S.C.Par.1981 et seq. 109 U.S. 3, 3 S.Ct.18) admitted by the defense above and beyond the meaning of a demurrer.

The U.S. Court of Appeals did not take in consideration the facts as presented by the petitioner, did not make any evaluation that the presented facts as violation of Civil Rights do not possess any similarity with the circumstances, with which the case *Williams v. Yellow Cab Co.* was brought before the Federal Court. Therefore in the absence of the U.S. Court of Appeals acceptance, that the petitioner's complaint as proven is actionable and with a judgment in compliance with the U.S. Supreme Court's ruling 109 U.S. 3, 3 S.Ct. 18, the U.S. Court of Appeals' decision is objected as erroneous.

III. The Circuit Court of Appeals erred in citing in the judgment parts of the state court (accident) proceeding, not argued before the Circuit Court, which in some parts as cited in the opinion, do not agree with the courts' records, in other parts have not been legally proven in neither court proceeding.

It is certainly surprising, that the U. S. Court of Appeals makes in his decision the use of events before the Common Pleas Court, which are highly argumentative despite the acceptance of the jury's decision; per example the judge's expression in the courtroom ". . .

(plaintiff's) case is very, very slim . . ." would have to be evaluated as improper influence upon the inexperienced jury before the same could hear all witnesses and reach a verdict. The U. S. Court of Appeal's use of the state court's arguments is the more surprising, because the U. S. District Court refused to review them, only to justify "the missing cause of action" of the complaint and its dismissal with inapplicable ruling.

Special attention shall be given to the U. S. Court of Appeal's statement in the opinion:

> Quote: "In the original negligence trial, appellant's suit was strongly attacked by the contentions that the proofs showed he had been at fault in the accident * * * and that he had not been as badly hurt, as contended." Unquote.

After review of all briefs and hearings records before the U. S. District Court as well as before the U. S. Court of Appeals (petitioner's testimony and cross-examination's record as witness in the accident case is also on file, but probably does not contain any acceptable reference) petitioner is inclined to make the statement that *nowhere the defense attempted to express the contentions* of the proofs showing the petitioner of being at fault in the accident, as the Court noted in the opinion.

One of the physicians, who treated the petitioner after the accident, appeared as witness in the Common Pleas Court for the plaintiff. The defense certainly had the right to submit the petitioner to a medical check-up by their own physician and therefore with his diagnosis, if he found so, to object to the seriousness of the petitioner's experienced injuries, as contended. The defense counsel, with all due regard for his capability, can not

be considered as sufficient medical expert and any his CONTENTION against the testimony of the physician in the courtroom is objectionable, even if not objected by the other party's counsel. But certainly it is very surprising that the Court in the knowledge of the lack of validity of the COUNSEL's CONTENTION could have repeated this as an argument in the Court's opinion.

In view of these circumstances the question seems appropriate and not to avoid: *"Who delivered to the Court additional informations beyond the briefs and hearings or who suggested or wrote arguments which found exploit in the Court's opinion?* In the addition, these arguments being highly objectionable and legally not acceptable.

IV. The Circuit Court of Appeals erred in failing to issue a ruling on a charge of defamation against the defense brought forth in the proceeding before the Court October 17th, 1963 and being under the jurisdiction of the Federal Court Authorities.

In addition to the insults used against the petitioner in the state court proceeding the defense extended the similar vocabulary in the following briefs to the courts with the expressions, in the defense counsel's opinion appropriate to use in court matter, as: impertinent, false, scandalous, sham, and so on.

And in reply to the petitioner's reference to *Schlesinger Appeal* 404 Pa. (Annex "F" page 35) named par. 17 in the complaint, the defense wrote in brief to the U. S. District Court: " * * * as a person not learned in the law to exercise his SPITE by making a SCURRILOUS

attack upon a *me iber of the bar of this court* * * *". Does the defense counsel in earnest seem to suggest that even as defendant and party but as MEMBER OF THE BAR OF THIS COURT he deserves a exceptional preference and privilege to the other party, the NOT LEARNED IN THE LAW, a theory, so definitely accepted and expressed, probably utilized, by the Prothonotory of the Supreme Court of Pennsylvania.

The U.S. District Court did not issue any ruling upon the defense's motion, brought forth formally, to strike the complaint's par. 17 as named before.

The U. S. Court of Appeals did not issue any ruling upon the petitioner's motion and complaint against the defense, citing as defamation under the federal jurisdiction the defense's use of the description in reference to the petitioner: "scurrilous attack." Both Courts bypassed these motions in silence, left the opinion basically uncompleted. Obviously no answer seems to be available.

QUESTIONS ARISING OUT OF THIS CASE

1. **Are Provisions of the United States Constitution as Due Process and Equal Protection of the Laws observed and protected in the execution of state court proceeding?**

The nation as the representation of every citizen as its member sustains the courts designed for the function which they shall perform. And the judge is the official assigned to realize this: the intended function of the courts with the responsibility to the best of his knowledge.

Some court rulings attempted to state otherwise, that in civil cases the judge is only the "neutral observer" in the dispute of the opposing parties, in the opinion's meaning merely lending to them the Courtroom as place of their meeting each other, with this thesis absolving the judge from the responsibility of any kind in regard of his official activities.

Contrary to this type of program of the courts, any citizen in his general knowledge of the existing legislation, once he considers necessary to turn to the court for assistance, is presumed to be expecting and shall expect to find the courtroom with the dignity of its proceeding, the presiding judge entrusted to execute justice and empowered to protect the party with the provision of the laws, to which he is entitled.

Once the judge fails to observe and comply to his duties, the appeal from the judgment, available to the injured party, is only an occasional remedy. But the appeal is not the proper answer but more the blessing excuse for the judge's failure in missing the court's function and destiny.

Two judges of the Common Pleas Court, colleagues of Judge C. B. NIXON, who directly participated in this case, expressed their opinion, that they wouldn't have permitted the defendant's utterances in the courtroom and would have prevented them. Also in view of the Bar Association's statement *Judge C. B. Nixon's at least* moral responsibility for the occurrence in the courtroom, lack of proper action and response and finally his subsequent erroneous ruling (Annex A page 23, repeated in the U. S. Court of Appeals opinion) seems more than justified.

2. **Are Lower or State Courts entitled in their rulings to prefer customary or state decisions against or despite applicable federal legislation and the Constitution of the United States?**

Any Constitutional Legislation, enacted by the Congress of the United States, approved by the Legislative Bodies of at least 38 States, can be considered VOID, *requests the accord of the Common Pleas Court's judge*, who as in this case, ruled otherwise, preferred Rodger and Hammerstein's Broadway play to form his own image with the power of the court's judgment in setting a usage above and beyond the federal law, to be followed by the intended ruling. Subsequently the defense attributes an assistance in some form of litigation as *partially privileged, or may be absolute privileged.*

And in the logical consequences: if the principle of the lower court's judgment in the described circumstances finds the approval, the value of any legislative body's work and its enacted law is in jeopardy.

The violation of federal legislation in a court proceeding was presented for decision to the same State Court, as expected from citizens of the same state. But the Court failed to substantiate his opinion with arguments being in direct reference to the federal provision in question, missed completely the federal legislation, its intention and obligation.

This lack of substance in the cited court's ruling, only too obvious, and in the logical consequence made it mandatory, to REMOVE this complaint with justified cause of action to the jurisdiction of the Federal Court.

CONCLUSION

The presented petition, as outlined herein, goes far beyond the limits, being set up by the rules of the Supreme Court of the United States, the petitioner respectfully asking the Court's indulgence.

The violation of the law and the subsequently erroneous exoneration by the courts occurred already in the state courts. The U. S. Court of Appeals' opinion does not reflect the question raised by the complaint, and limiting this petition only to the U. S. Court of Appeals' points of reasoning, would mean to abandon the fundamentals of the charge against the defense, as well the critic of the courts' decisions, theretofore to miss this petition's cause.

GIVING THE CITIZENSHIP TO AN IMMIGRANT-RESIDENT is an ACT OF LAW, documented with its execution BY A FEDERAL JUDGE.

And petitioner as well as the other (estimated) 25 Millions naturalized citizens, being proud of their U. S. citizenship, can not prevent, if it is insulted for any imaginary reason and in any place, but certainly *shall object and prosecute with all legal means anyone who infringes this citizenship in a LEGAL ACTON IN A COURT OF LAW.*

Conclusion.

May the petitioner ask respectfully the permission to enter the opinion in one of the recent civil rights cases, as reported in the newspaper:

> "In his solo dissent, Justice Harlan lamented the court's departure from its previous and long-standing refusal to enter the "political thicket" by acting on such cases. But it is in the "political thicket" where the civil rights of the people — be they minorities or all of us—too often are roughed up. AND IF WE DO NOT HAVE THE PROTECTION OF THE COURTS, WHERE IS THE ALTERNATIVE?"

It is respectfully submitted that the decision of the U. S. Court of Appeals for the Third Circuit is in conflict with prevailing rules of law announced by decisions of the Supreme Court of the United States, and that for the reasons herein assigned this Court is requested to issue a Writ of Certiorari to the United States Court of Appeals for the Third Circuit so that the judgment of said Court may be reversed and issued in favor of the petitioner.

Respectfully submitted

EDMUND WINKLER, pro se
2321 Sherbrook Street,
Pittsburgh, Pa. 15217

APPENDIX I.

ANNEX "A"

From the record — No. 1227 Jan. Term 1958

(*Mr. Berger* closes to the jury.) (for the plaintiff)

Mr. Pringle: I object to that as an improper argument. I would like to make a motion in connection with that. The plaintiff's attorney stated substantially "it is too bad that human beings have to go through the rigors and tortures of being put in prison camps by the Russians" and words to that effect I can't quote in full, but that is the tenure of it.

I respectfully suggest that such an address is inordinate and unwarranted appeal to the prejudices, and therefore move for the withdrawal of a juror and continuance of the case.

Mr. Berger: *That came out in testimony in cross-examination* and it is in *reply to Mr. Pringle's insinuation that this man is trying to get money* for nothing from the Pennsylvania Railroad Company, and he didn't let me finish the remarks, *I didn't interrupt him.*

Mr. Pringle: I didn't say anything like that.

The Court: Anything you have to say, say it now, both of you. You say you didn't finish your remarks?

Mr. Berger: I didn't finish my remarks. That is leading up to what I was going to bring out.

The Court: Now, let me say to the Jury that I refused Mr. Pringle's motion to withdraw a juror and continue the case. I will say this to you twelve men and women — I believe in you, in all of you, and some experi-

ence that some litigant may have had in Russia hasn't any part in this case at all; and neither is there any prejudice against the railroad nor does it have any place in this case at all. This case is to be decided by you twelve folks, unanimously, upon the facts and circumstances that existed on July 14, 1956 and that alone. The question that you have to decide, as I see it, and I may as well say it now, is was the Railroad Company negligent, was Mr. Winkler contributorily negligent, was he negligent. That is all you have to decide.

Proceed, Mr. Berger.

Mr. Berger: (continues his closing to the jury).

ANNEX "B"

From defendant's briefs to No. 2180 April Term 1962

* * * * * * *

"Plaintiff seems to feel agrieved because some reference was made by counsel for the defense to his foreign birth. It would seem to be significant that plaintiff's counsel at the former trial tried to make capital of plaintiff's past by dwelling on plaintiff's having been put in a Russian prison camp and that defendant's counsel made this portion of plaintiff's counsel's concluding speech a matter of record and moved for the withdrawal of a juror. * * *

From the opinion of the Court in Banc to No. 2180 April Term 1962.

Credibility of a witness being pertinent in the personal injuries trial of Winkler v. The Pennsylvania Railroad Company, the defamatory use of the "liar" phrase

comes within the protection of the conditional absolute privilege rule.

Plaintiff's origin in a country other than the United States, i.e., foreign birth, was *first injected into the trial in the plaintiff's own case by his own counsel.* The fact that plaintiff sustained certain hardships in a Russian prison camp was introduced in his case as a matter designed to benefit him in the proceedings.

How foreign birth should become proper recruit in the army of facts marshalled by plaintiff in a negligence action is a matter best described in the words of Rodgers and Hammerstein's Broadway King of Siam: "It's a puzzlement". Suffice it to say, however, that once committed to a forensic battle a barristerial gladiator becomes a target for attack.

Comment concerning this becomes "pertinent and relevant"; and defamatory references concerning foreign birth which conceivable may have been actionable if uttered outside this *circumscribed jurisprudential arena*, become *protected by the shield of privilege.*

Appendix I.

ANNEX "C".

BERGER & BERGER
ATTORNEYS AT LAW
1108 Law and Finance Building
Pittsburgh 19, Pa.

281-9084
471-3311

MORRIS M. BERGER
DANIEL M. BERGER
C. WILLIAM BERGER
RALPH W. SPENCER

April 3, 1963

Mr. Edmund W. Winkler
2321 Sherbrook Street
Pittsburgh 17, Penna.

Dear Mr. Winkler:

At your request, I hereby make the following statement concerning the case which we tried in your behalf against the Pennsylvania Railroad Company:

TO WHOM IT MAY CONCERN:

During the trial that was held in the Court of Common Pleas of Allegheny County from March 2 to March 8, 1961, in the matter of *Edmund W. Winkler v. Pennsylvania Railroad Company, et al.*, Samuel W. Pringle, counsel for Defendant, Pennsylvania Railroad Company, first introduced into the testimony, through cross-examination of the Plaintiff, that the Plaintiff, during World War II, was a prisoner in a Russian prison camp. Later, during his summation to the jury, defense counsel re-

ferred to Plaintiff as being a foreigner or in some other manner made reference to the fact that Plaintiff had come to the United States from a foreign land. In my closing to the jury in behalf of the Plaintiff, I attempted to refer to the Plaintiff's war-time experiences in order to rebut the statement made by defense counsel; however, Mr. Pringle objected and the Court thereupon prevented me from finishing my remarks in this regard.

Sincerely yours,

MORRIS M. BERGER

MMB:LW

ANNEX "D".

From the hearing before the U.S. District Court Nov. 7, 1962.

* * * * * * *

Presentation of the defense, page 3 of the record:

"What he complains of is, he says that Mr. Pringle referred to him as a foreigner, in his closing speech to the jury. Now, of course, Mr. Pringle doesn't agree with anything that he said, *I mean* with Mr. Winkler's *interpretation* of what he said. *Mr. Pringle certainly has known that Mr. Winkler is a naturalized citizen*".

* * * * * * *

Presentation of the defense, page 6 and 7 of the record:

"*The Court*: In Paragraph 13, the plaintiff contends and charges that the defendant falsely and maliciously described the plaintiff as a foreigner, that the remarks

uttered and published by the defendant were and are untrue, but primarily I would be concerned with the word maliciously more than falsely.

Forget about everything else in the complaint. *Here can be sufficient basis for a complaint* if it is supported by law.

Mr. Martin: Sufficient basis for a complaint in what, in libel, slander?

The Court: All right. I say if it is supported in law. Now I am not answering that at the moment. I am merely saying this is now what strikes me. I don't care what else has been said, because everything else that has been said is argumentative and surplusage. *These two points now come within our rules of civil procedure, as stating a cause of action if supported by law.*

Mr. Martin: A cause of action in what? If it is *cause of action* in libel or a cause of action in slander, the Court has no jurisdiction, *barring diversity.*

The Court: Of course, it must meet the requirements of jurisdiction. Now, does it? And does the *substance itself* comprise *a cause of action* under the law?

Mr. Martin: I don't think even libel or slander, *calling somebody a foreigner*, whether he is no not, *is libellous. It may be.*

The Court: Is this covered in your brief, the points I have raised?

Mr. Martin: No, sir. * * *

* * * * * * *

Appendix I.

ANNEX "E".

From the hearing before the U.S. DistrictCourt Nov. 7, 1962.

Presentation of the plaintiff, page 21 and 22 of the record:

* * * * * * *

Mr. Winkler: * * * The defense alleged that the remark, the foreign birth came in the picture, arised by plaintiff's counsel, but is not true. In this testimony today, I stated that the case, the question *about the prison itself and only* came up in cross-examination afterwards about this point.

The Court: The Court didn't say that. The Court said you brought it out in your own case.

Mr. Winkler: Sorry, I gave it in writing in my brief.

The Court: *I'll have to accept what the judge says here. I can't accept your statement on that.*

Mr. Winkler: Oh yes, then O.K. Your Honor, you will accept testimony?

The Court: I will accept.

Mr. Winkler: Transcript of testimony as proof?

The Court: Do you have a transcript of the arguments of the lawyers before the jury?

Mr. Winkler: I have said testimony.

The Court: Do you have all of that?

Mr. Winkler: My testimony and after that, the cross-examination. Now, this cross-examination—

The Court: Yes, I will accept that as either supporting you or not.

Mr. Winkler: Sure.

The Court: *In conjunction with this particular matter.*

Mr. Winkler: Sure, sure.

The Court: In the form of supplemental testimony in lieu of affidavits. * * *

ANNEX "F"

17. Reference:

Schlesinger Appeal 404 Pa.

(Majority) Concurring opinion by Mr. Justice Eagen.: Quote:

> "By the same token if due process were present I would unhesitatingly vote to affirm the order of disbarment.
>
> An individual, who is given the priceless privilege of practicing law, is duty bound to uphold and defend the Constitution of the United States of America. This is the minimum that might be expected of one so highly favored. *If established facts tend to indicate that he has forsaken that oath*, the least he should do is answer if called upon . . . *is sufficient to warrant the conclusion that he is the type of person unworthy of being a member of the legal profession.*

Unquote.

Appendix I.

ANNEX "G"

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

EDMUND WINKLER, Plaintiff, v. SAMUEL W. PRINGLE and THE PENNSYLVANIA RAILROAD COMPANY, a Corporation, Defendants	CIVIL ACTION No. 62-808

Opinion and Order

LOUIS ROSENBERG, *District Judge*

The plaintiff here was an unsuccessful plaintiff in a negligence action in the Court of Common Pleas of Allegheny County at No. 1227 January, 1958, where he was represented by his own counsel. Thereafter at No. 2180 April 1962, the plaintiff in propria personam filed a complaint in the same court by which he charged defendant's counsel, in the prior case, with making defamatory remarks, by which he was damaged. The defendant filed preliminary objections to this latter complaint in the nature of a demurrer. The preliminary objections were sustained by a court en banc, on the well reasoned opinion of Judge Aldisert. *Edmund Winkler v. Samuel W. Pringle and The Pennsylvania Railroad Company*, 110 P.L.J. 323 (1962). On September 4, 1962, plaintiff again in propria personam filed an appeal to the Supreme Court of Pennsylvania from the dismissal of this complaint in the Court of Common Pleas. As of this date that appeal is still pending.

Appendix I.

The plaintiff's action here against the defendants is for the violation of his civil rights. Defendants' motion for dismissal is based upon the reason that plaintiff's complaint does not set out a cause of action. The Court agrees with the defendant. In fact, it is obvious that under no circumstances can the plaintiff prevail upon the facts averred and as they appear of record. Since the plaintiff has incorporated in his complaint the proceedings had in the Common Pleas Court, they are here considered factually.

Plaintiff attempts to meet jurisdictional requirements as to diversity of citizenship by invoking the Civil Rights Act, 42 U.S.C.A. 1981, et seq. Judge Maris of the Third Circuit Court discusses this question in *Williams v. Yellow Cab Co. of Pittsburgh, Pa.*, 200 F.2d (3rd Cir.) (1952) at page 307:

> "It has long been settled that the Fourteenth Amendment is directed only to state action and that the invasion by individuals is not within its purview. It necessarily follows that the jurisdiction conferred upon the federal district courts by Section 1343 is similarly limited and that redress for the invasion by an individual of the civil rights of another must be sought in the state courts, unless of course, diversity of citizenship is present."

---

1. "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." XIVth Amendment, Section 1.

Plaintiff does not argue or contend that any of the named parties in the above suit are anything but residents and domiciliaries of Pennsylvania. In seeking an avenue of entrance into a United States court, he asserts that the State court officials judges, lawyers, sheriffs, tipstaffs, etc., both at the trial of the first case and on his motion before the court en banc in the second case conspired to deny him justice. While making these assertions, he does not aver a single fact upon which he can achieve his aim. His averments are based upon his own conclusions and to bolster these, he asks this Court to review the entire trial record and pass judgment on the decision rendered by the State court. There is no need to cite the numerous cases that hold that a United States district court will not act as a court of review simply because a party feels that the State courts have denied him his own predetermined remedy.

In all other respects, since Judge Aldisert succinctly explains and summarizes the law and rationale as to the rights, privileges and safeguards which were applicable in the actions of that court, it is obvious that the plaintiff has neither a bare cause of action nor any rights by which his complaint in this Court can be sustained. The motion of the defendants to dismiss will be granted.

ORDER OF COURT

AND NOW, TO-WIT, this 10th day of January 1963, for the reasons set forth in the foregoing opinion.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the defendants' motion to dismiss the complaint is granted.

s/ LOUIS ROSENBERG
United States District Judge

C.C. Counsel of Record

APPENDIX II.

ANNEX "J"

GINSBURG v. SUPREME COURT OF PENNSYLVANIA

251 F 2d, 49 Due process of Law.

U. S. Court of Appeals, 3rd. Circuit.

To determine the issue as to whether the Third Civil Rights Act of April 20, 1871—17 Stat. 13 now R.S.Section 1979, abrogated the Common Law immunity of the judiciary of the Commonwealth of Pennsylvania as we held in Picking v. P.R.R. 3rd.Circ. 1945, 151 F 2d. 240. We desire to make it clear in this opinion that we are in nowise passing on this issue, attempted to be presented by Ginsburg, and we express no opinion as to whether the principle enunciated by us in Picking was in effect overruled by Tenney v. Brandshave, 1961 341 US.367, 71 S.Ct.783, 95 L.ed.1019.

ANNEX "K"

CIVIL RIGHTS CASES

109 US 3, 3 S Ct.18 Oct.Term 1883, 3-62

(Annotated) 27 L.ed.835

page 841:

In this connection it is proper to state that civil rights, such as guaranteed by the Constitution against state aggression, cannot be impaired by the wrongful acts of individuals, unsupported by *state authority in the shape of* laws, customs or *judicial* or executive *proceedings*. The wrongful act of an individual, unsupported by any such authority, is simple a private wrong, or a crime of that individual; an invasion of the rights of the injured

party, it is true, whether they affect his person, his property or his reputation; *but if not sanctioned in some way by the State*, or not done under State authority, his rights remain in full force, and may presumably be vindicated by resort to the laws of the State for redress. An individual cannot deprive a man of his right to vote, to hold property, to buy and sell, to sue in the courts or to be a witness or a juror; he may, by force or fraud, interfere with the enjoyment of the right in a particular case; he may commit an assault against the person, or commit murder, or use ruffian violence at the polls, or *slander the good name of a fellow citizen* but *unless protected in these wrongful acts by some shield of state law or state authority*, he cannot destroy or injure the right; he will only render himself amenable to satisfaction or punishment, and amenable therefor to the laws of the State where the wrongful acts are committed.

ANNEX "L"

CIVIL RIGHTS CASES

109 US 3, 3 S Ct. 18 Oct. Term 1883. 3-62

(Annotated) 27 L.ed. 835

page 839.

An inspection of the laws shows that it makes no reference whatever to any supposed or apprehended violation of the Fourteenth Amendment on the part of the States. It is not predicated on any such view. It proceeds ex directo to declare that *certain acts committed by individuals shall be deemed offences, and shall be prosecuted and punished by PROCEEDINGS IN THE COURTS OF THE UNITED STATES.*

. . . continued:

In other words, it steps into the domain of local jurisprudence, and lays down rules for the conduct of individuals in society towards each other, and imposes sanctions for the enforcement of those rules, without referring in any manner to any supposed action of the State or its authority.

. . . continued:

that *any person who, under color of any* law, statute, ordinance, *regulation or custom*, shall subject or cause to be subjected, any inhabitant of any State or Territory to the deprivation of any rights . . . on account of such person being an alien, or by reason of his color or his race, than is prescribed for the punishment of citizens, *shall be guilty of misdemeanor*, and subject to fine and imprisonment as specified in the act.

This law is clearly corrective in its character, intended to counteract and *furnish redress against STATE laws and PROCEEDINGS, and CUSTOMS HAVING THE FORCE OF LAW, which sanction the wrongful acts specified.*

ANNEX "M"

28 U.S.C. Par. 1343.

The District Courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person.

(3) To redress the deprivation, under color of any statute, ordinance, regulation, custom or usage, of any

right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

Senator THURMAN of Ohio in the Senate vein about the Section we are now considering:

It authorizes any person who is deprived of any right privilege or immunity secured to him by the Constitution of the United States, to bring an action against the wrong-doer in the Federal Courts, and that without any limit whatsoever as to the amount in controversy. The deprivation may be of the slightest conceivable character, the damages in the estimation of any sensible man may not be five dollars or even five cents; they may be what lawyers call merely nominal damages; and *yet by this section jurisdiction of that civil action is given to the Federal Courts instead of its being prosecuted as now in the Courts of the States.*

ANNEX "N"

Monroe v. Pape 365 US. 167

Mr. Justice Douglas delivered the opinion of the Court: This case presents important questions concerning the construction of R.S.Par.1979 42 U.S.C.Par.1983, which reads as follows: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution

and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

ANNEX "O"

U.S. CIVIL RIGHTS

Par. 3-b. Section 5508 and 5509 of the revised Statutes of the United States, providing for the punishment of conspiracy to injure or intimidate citizens in the exercise of their civil rights are CONSTITUTIONAL.

Motes v. United States, 178 US. 458, 20 S.Ct. 993 44 L.ed. 1150.

ANNEX "P"

The CIVIL RIGHTS ACT does not protect one from invasion of private rights by individual action — unless two or more persons conspire to deprive a person or class of persons of the equal protection of the laws or of equal privileges and immunities under the law or for the purpose of *preventing or hindering the constituted authorities from giving or securing to all persons the equal protection* of the laws.

Collins v. Hardyman, 1951, 341, US. 651, 660-661, 71 S.Ct. 937, 95 L.ed. 1253.

Page 28 of the hearing's record: In the US. District Court for the Western District of Pennsylvania, Winkler v. Pringle et al. CA. 62-808.

APPENDIX III.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 14,365

EDMUND WINKLER,
Appellant,

v.

SAMUEL W. PRINGLE and THE PENNSYLVANIA RAILROAD COMPANY, a Corporation,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Argued October 17, 1963

Before McLAUGHLIN, HASTIE and FORMAN,
Circuit Judges.

Opinion of the Court

(Filed November 6, 1963)

PER CURIAM.

Appellant, a naturalized citizen and resident of Pennsylvania, sued the defendant railroad in the Court of Common Pleas, Allegheny County, Commonwealth of Pennsylvania, for alleged personal injuries and property damage as a result of a collision between his automobile which he was driving and a train of the railroad. The other defendant, an attorney, represented the railroad in that action. The trial judge, while he thought that the

plaintiff's "* * * case is very, very slim * * *" felt that "* * * the jury should pass on it." The jury did so and found in favor of the defendant railroad. Plaintiff in that trial claimed leg injuries as a result of the accident. In the course of the trial it appeared from plaintiff's testimony that his legs had also been damaged from treatment received by him while a prisoner in a Russian prison camp during the last war. The closing arguments of counsel, if they were taken stenographically, have never been transcribed. It is claimed by appellant that in the summation by defendant Pringle he referred to appellant as a "foreigner". Appellant's attorney, summing up in that suit, did refer to appellant's experience in a Russian prison camp. On a defense mistrial motion as to this, the trial judge, denying the motion, instructed the jury:

> "I will say this to you twelve men and women—I believe in you, in all of you, and some experience that some litigant may have had in Russia hasn't any part in this case at all; and neither is there any prejudice against the railroad nor does it have any place in this case at all. This case is to be decided by you twelve folks, unanimously, upon the facts and circumstances that existed on July 14, 1956, and that alone. The question that you have to decide, as I see it, and I may as well say it now, is was the Railroad Company negligent; was Mr. Winkler contributorily negligent, was he negligent. That is all you have to decide."

There was no objection to the alleged language of the defense at the time uttered or thereafter in plaintiff's post trial motion. No appal was taken from the judgment entered in favor of the defendant.

Later appellant sued the railroad and its attorney in the state court for defamation arising out of the alleged above noted remark. The defense demurrer to that action was sustained. 110 Pittsburgh L.J. 323 (1962). The appeal to the Pennsylvania Supreme Court was dismissed for failure to prosecute. This suit based on the same ground followed, plaintiff claiming a violation of his rights under the Fourteenth Amendment and the Civil Rights Act. The defendant moved to dismiss, contending that no cause of action was stated, no jurisdiction and that the Pennsylvania Statute of Limitations, 12 P.S. 31, 32, barred the claim. The district court granted the motion. It held that this was clearly a suit by an individual asserting an invasion of his civil rights by individuals for which remedy must be had in the state courts unless diversity of citizenship exists between the parties. The opinion went on to state "Plaintiff does not argue or contend that any of the named parties in the above suit are anything but residents and domiciliaries of Pennsylvania." The opinion further holds that in support of the bare assertion that the state court officials, including two of the three judges who comprised the court which dismissed the state defamation cause, conspired to deny appellant justice, appellant "* * * does not aver a single fact upon which he can achieve his aim."

Our review of the entire record on file in this court satisfies us that the action of the district court was proper.

In the original negligence trial, appellant's suit was strongly attacked by the contentions that the proofs showed he had been at fault in the accident and that he had not been as badly hurt as contended. Any American

citizen, as he is, in those circumstances might well have been exposed to an uncomplimentary view of his claim as presented by the other side. And so too with respect to the appellees' brief in this appeal. Appellant in his pro se brief does use violent language which appellees characterize as "scandalous". Appellant is upset about this but very largely brought it on himself. Nothing more need be said regarding it.

The judgment of the district court will be affirmed.

A true Copy:

Teste:

Clerk of the Court of Appeals for the Third Circuit.

Appendix III.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 14,365

EDMUND WINKLER,

Appellant

v.

SAMUEL W. PRINGLE and THE PENNSYLVANIA RAILROAD COMPANY a Corporation

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Present: MCLAUGHLIN, HASTIE and FORMAN, *Circuit Judges.*

Judgment

This cause came to be heard on the record from the United States District Court for the Western District of Pennsylvania and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this Court that the order of the said District Court filed January 10th, 1963 in this case be, and the same is hereby affirmed with costs.

Attest:
IDA O. CRESKOFF
Clerk

Received and filed
Nov. 5, 1963
Ida O. Creskoff, Clerk
November 5, 1963

Appendix III.

A/ I, Ida O. Creskoff, Clerk of the United States Court of Appeals for the Third Circuit, Do Hereby Certify the foregoing to be a true and faithful copy of the original Appendix for Appellant, and proceedings in this Court in the case of Edmund Winkler, appellant v. Samuel W. Pringle and The Pennsylvania Railroad Company, a corporation, No. 14365,

on file, and now remaining among the records of the said Court, in my office.

In Testimony Whereof, I have hereto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 15th day of November 1963.

Ida O. Creskoff,
Clerk of the U.S. Court of Appeals, Third Circuit.

B/ I, Ida O. Creskoff, Clerk of the United States Court of Appeals for the Third Circuit, Do Hereby Certify the foregoing to be a true and faithful copy of the original documents annexed to the appendix designated by the letter "J" to "T" inclusive, in the case of Edmund Winkler v. Samuel W. Pringle, et al. No. 14,365, on file, and now remaining among the records of the said Court, in my office.

In Testimony Whereof, I have hereto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 30th day of January 1964.

Ida O. Creskoff,
Clerk of the U.S. Court of Appeals, Third Circuit.

APPENDIX IV.

SUPREME COURT OF THE UNITED STATES

No. ..... October Term, 1963.

EDMUND WINKLER,

Petitioner

v.

SAMUEL W. PRINGLE, ET AL.

Respondents

Order Extending Time to File Petition for Writ of Certiorari

Upon consideration of the application of petitioner, It Is Ordered, that the time for filing petition for writ of certiorari in the above-titled cause be, and the same is hereby, extended to and including April 4, 1964.

/s/ WILLIAM J. BRENNAN, JR.
Associate Justice of the Supreme Court of the United States.

Dated this 22nd day of January 1964

APPENDIX V.

28 U.S.C. Par 1343.

CIVIL RIGHTS AND ELECTIVE FRANCHISE.

The Districts Courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

1. To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42.

2. To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent.

3. To redress the deprivation under color of any State Law, Statute, Ordinance, Regulation, Custom or Usage, of any Right, Privilege or Immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

42 U.S.C. Par. 1983.

CIVIL ACTION FOR DEPRIVATION OF RIGHTS.

Every person who, under color of any statute, ordinance, regulation, custom, or usage of any state or territory, subjects, or causes to be subjected any, citizen of the United States or other persons within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and Laws, shall be liable to the party injured in an action at Law, Suit in Equity, or other proper proceeding for redress. R. S. Par. 1979.

42 U.S.C. Par. 1985.

CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS

2. If two or more persons in any State or Territory conspire to deter by force, intimidation, or threat, any party or witness in any Court of the United States, . . . to injure such party or witness in his person or property on account of his having so attended . . . or to influence the verdict, presentment or indictment of any grand or petit jury in any such court . . . or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the Laws, or to injure him on his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons to the equal protection of the Laws.

SECTION 1 OF THE XLVth AMENDMENT CITED ON PAGE 37.